IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BOARDS OF TRUSTEES OF OHIO
LABORERS' FRINGE BENEFIT PROGRAMS,

        Plaintiffs,

    v.   **Civil Action 2:16-cv-290**
                                                      Judge Michael H. Watson
                                                      Magistrate Judge Jolson

NORTH AMERICAN CEMENT CO., INC.,

        Defendant.

REPORT AND RECOMMENDATION

This is an action for unpaid fringe benefit contributions, liquidated damages, and interest allegedly owed certain employee benefits plans pursuant to a collective bargaining agreement. Plaintiffs, the trustees of four trust funds, assert claims under ERISA, 29 U.S.C. § 1132. Defendant North American Cement Co., Inc. was served with a summons and a copy of the complaint on April 7, 2016 (Doc. 4), but has failed to plead or otherwise defend this action. Plaintiff applied to the Clerk for entry of default (Doc. 8), and the Clerk entered default pursuant to Federal Rule Civil Procedure 55(a) on July 18, 2016 (Doc. 9). This matter is now before the Court on Plaintiffs' Motion for Default Judgment (Doc. 10), seeking default judgment against Defendant.

Plaintiffs have established that Defendant entered into an agreement with a local union affiliated with the Laborers' District Council of Ohio, AFL-CIO, by which Defendant agreed to pay contributions to the funds, by the 15th of each month, on behalf of its employees working

within the work jurisdiction of the union. (*See* Doc. 10-3, Ex. A, B). The affidavit of Plaintiffs'

Contractor Relations Manager (Doc. 10-2), establishes that Defendant owes $1,380.07 in unpaid

fringe benefit contributions, liquidated damages, and interest for the period June 2015 through

December 2015. (*Id*. at ¶ 3; Doc. 10-3, Ex. C); 29 U.S.C. § 1132(g)(2).

Plaintiffs seek an award of attorney's fees in the amount of $1,912.50, for seven and one-

half hours billed at the rate of $255.00 per hour. (Doc. 10-3, Ex. D). Plaintiffs have provided

evidentiary support that the number of hours billed and the hourly rate charged are reasonable.

(*Id*.; Ex. 10-1).

Plaintiffs are therefore entitled to judgment in the amount of $1,380.07 in unpaid fringe

benefit contributions, liquidated damages, and prejudgment interest, and an award of attorney's

fees in the amount of $1,912.50.

Accordingly, it is **RECOMMENDED** that Plaintiffs' Motion for Default Judgment (Doc.

10), be **GRANTED**. It is **FURTHER RECOMMENDED** that the Clerk enter judgment

against Defendant North American Cement Co., Inc., and that Plaintiffs Boards of Trustees of

the Ohio Laborers' Fringe Benefit Programs have and recover from North American Cement

Co., Inc., the sum of One Thousand Three Hundred Eighty Dollars and Seven Cents ($1,380.07),

including unpaid fringe benefit contributions through December 2015, prejudgment interest, and

liquidated damages, and reasonable attorney's fees in the amount of One Thousand Nine

Hundred Twelve Dollars and Fifty Cents ($1,912.50), plus interest from the date of judgment at

the rate of one percent (1%) per month.

If any party seeks review by the District Judge of this Report and Recommendation, that

party may, within fourteen (14) days, file and serve on all parties objections to the Report and

Recommendation, specifically designating this Report and Recommendation, and the part thereof

in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

Date: July 20, 2016   /s/ Kimberly A. Jolson
                                                          KIMBERLY A. JOLSON
                                                          UNITED STATES MAGISTRATE JUDGE